IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No. 4 of 2003
With
COMPANY PETITION No. 97 of 2006
With
COMPANY APPLICATION No. 258 of 2006
In
COMPANY PETITION No. 36 of 2006
With
COMPANY PETITION No. 36 of 2006
With
COMPANY PETITION No. 273 of 2002
With
COMPANY PETITION No. 164 of 2005
With
COMPANY PETITION No. 73 of 2006
With
COMPANY PETITION No. 75 of 2006
With
COMPANY PETITION No. 76 of 2006
With
COMPANY PETITION No. 111 of 2006
With
COMPANY PETITION No. 253 of 2004
With
COMPANY PETITION No. 48 of 2004
With
COMPANY PETITION No. 288 of 2003
With
COMPANY PETITION No. 187 of 2003
With
COMPANY PETITION No. 96 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MR.BASUDEV PERMESHWAR SADH - Petitioner(s)

Versus

CHOKSI TUBE COMPANY LIMITED - Respondent(s)

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Appearance :

MS PP LAHERI for Petitioner(s) : 1,

MR MANISH R BHATT for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 11/09/2006

ORAL JUDGMENT

As all these company petitions and one company application are with respect to one company i.e. Choksi Tube Company Limited, they are being disposed of by this common judgment and order and Company Petition No.4 of 2003 is to be treated as a main company petition for convenience.

2. Heard Shri Ms Hina Desai, Ms Swati Soparkar, Shri Sudhir M. Mehta, Ms Chapatvala for HL Patel Advocates, Shri Anip A. Gandhi, Ms Poonam Mathur for Singhi & Co. and Shri Indravadan Parmar, learned advocates appearing

on behalf of the respective petitioners/applicant and Shri Manish R. Bhatt learned advocate appearing for respondent company Choksi Tube Company Limited.

3. All these company petitions and one company application are filed by the respective petitioners/applicant under Sections 433, 434 and 439 of the Companies Act, 1956 for an appropriate order for winding up of the respondent company i.e. Choksi Tube Company Limited.

4. It appears from the record that the petitions/application are filed for winding up of the respondent company for their dues aggregating to more than Rs.12.35 crores (principal amount) as claimed in the respective petitions/application. It is submitted by the learned counsel appearing on behalf of the respondent company that over and above the dues of the unsecured creditors, for which the present petitions/application are filed, there are other unsecured creditors which are not before this Court and their dues are approximately Rs. 8 crores (principal amount). It is also submitted by the learned counsel appearing on behalf of the respondent company that there are other dues of secured creditors

amounting to Rs.57 crores (principal amount) due and payable by the respondent company. It is required to be noted that the respondent company has not disputed their liability and/or raised any dispute on merits with regard to claims of the respective petitioners/applicant.

5. It is the contention on behalf of the learned advocates appearing on behalf of the respective petitioners/applicant i.e. unsecured creditors that they have time and again demanded the amount due and payable to them but the respondent company has neglected to make the payment and thereafter, they were constrained to serve a statutory notice upon the respondent company and in spite of the service of the statutory notice, the amount was not paid and therefore, the petitioners/ applicant have preferred the present petitions/ application. It is further submitted that many a times, some cheques were given towards the outstanding dues but they are bounced with an endorsement “insufficient funds”. It is also further submitted by the learned advocates appearing on behalf of the respective petitioners/applicant that on various occasions, the company has assured the petitioners before filing of the petitions/application as well as after filing of the

petitions/application to pay the respective dues but neither any payment is made nor any concrete proposal to make the payment. It is further submitted that the company has neglected to pay its debts and thereby has failed to honour its commitments. It is further submitted that the company is not in a position to pay the dues of creditors and the company has lost its financial substratum and therefore, the respondent company is required to be wound up. It is also further submitted that pursuant to the advertisement in the local newspaper with regard to winding up of the company, some deposit holders have also submitted that their deposits are also not repaid. It is also further submitted that earlier during the pendency of the present company petitions/ applicant, even the company has approached the State Government declaring the respondent company as relief undertaking under the Bombay Relief Undertaking (Special Provisions) Act, 1958 and a notification was also issued by the State Government declaring the respondent company as relief undertaking under the BRU Act for the period between 28-2-2005 and 27-2-2006. However, the said notification is also further not extended. This shows that even the State Government has also thought it fit not to extend the period for the relief undertaking. It

is also submitted that even the cheques, for an amount of Rs.25 lacs deposited with the registry of this Court pursuant to the order passed by this Court, are also bounced. Thus, it is submitted that it is a fit case to pass appropriate order of winding up of the respondent company.

6. Ms Hina Desai, learned advocate appearing on behalf of one of the petitioning creditors has submitted that no reply is filed to the company petition filed by her and the amount due is more than Rs.8.10 crores (principal amount and approximately Rs.14 crores with interest). Ms Poonam Mathur, learned advocate appearing on behalf of one of the petitioning creditors has submitted that since the inception with a view to buy time, the company has given false promises that they are trying to negotiate with secured creditors and thereby to come with proposal but till date there is no proposal forthcoming. Shri Sudhir Mehta, learned advocate appearing on behalf of one of the petitioning creditors i.e. Company Petition No.96 of 2005 has submitted that even the cheques which were given by the respondent company against the dues of the petitioners/applicant are bounced and they are not in a position to even pay the interest amount. Shri Indravadan

Parmar, learned advocate appearing on behalf of one of the petitioning creditors has submitted that their outstanding dues are more than Rs.8 crores and there was no reply to the statutory notice. He has also further submitted that no objections are submitted by the respondent company after publication of the advertisement of the admission of the company petition and as such nobody has submitted any objection against winding up of the respondent company. He has relied upon the judgment of the Hon'ble Supreme Court in the case of M/s Madhusudan Gordhandas & Co. V. Madhu Woollen Industries Pvt. Ltd. reported in 1971(3) SCC 632.

7. All these petitions/application are opposed by Shri MR Bhatt, learned advocate appearing on behalf of the respondent company. It is submitted by him that the respondent company is negotiating with secured creditors and the Bank of India and Exim Bank have agreed for one time settlement and down payment is to be made by 31st October 2006. It is further submitted that with Development Credit Bank as well as the State Bank of India, the respondent company is trying to work out the arrangement and it is further submitted that after the dispute with the secured creditors are settled, the

dispute with the unsecured creditors can be settled. It is also further submitted that one of the secured creditors i.e. Allahabad Bank have objected to winding up of the respondent company. It is also further submitted that now investor has been identified who has agreed to invest in the company and the efforts of the company to procure the funds are continued. It is also further submitted that company has paid wages to their workers and therefore, it can be said to be a going concern and therefore, it is requested to dismiss all these petitions/application.

8. Heard the learned advocate appearing on behalf of the respective parties.

9. It is not in dispute that approximately more than Rs.21 crores (principal amount) are due and payable to various unsecured creditors inclusive of respective petitioning creditors. It is also not in dispute that there are other dues of the secured creditors amounting to more than 57 crores (principal amount) due and payable since 2-2-2003 and thereafter. It is also not in dispute that in spite of repeated demands/requests made by the respective petitioning creditors, aforesaid amount has

not been paid to the respective petitioning creditors. It is also not in dispute that since 2003, the respondent company is making false promises and has not come out with any concrete proposal or the scheme how the company proposes to procure funds from investors. At one point of time, the company was declared as a relief undertaking under the provisions of Bombay Industrial Relief Undertaking Act. However, there is no further extension of declaring the respondent company as relief undertaking. The dues to each of the petitioning creditors are admitted by the respondent company. A suggestion was made to the respondent company to pay at least 10% amount to the respective petitioning creditors to avoid any further order. However, Shri Bhatt, learned advocate appearing on behalf of the respondent company under the instructions of his client has submitted that it is not possible to make payment of any amount to the respective petitioning creditors at present. It is also required to be noted that earlier this Court passed an order on 15-6-2004 directing the respondent company to deposit a sum of Rs.25 lacs before the Registry of this Court and in fact, the cheques for an amount of Rs.25 lacs were deposited. However, all the cheques are bounced with an endorsement “today's opening balance

insufficient”. Therefore, even the cheques deposited with the Registry of this Court are also bounced. Earlier also the cheques for an amount of Rs.10 lacs was bounced which was deposited pursuant to the order passed by this Court. Thus, considering the above, it is clear that the respondent company is not in a position to clear its debts and not in a position to pay any amount to their creditors.

10. Pursuant to the order passed by this Court, the notices of the admission of the present petitions/ application were advertised in local newspaper and affidavit to that effect has also been filed. However, no objections are received till date against the winding up of the respondent company. The respondent company has also subsequently not filed any reply and/or objection to the winding up of the respondent company. The only defence of the respondent company is that they have identified the investor, who is ready to invest the amount, however, no particulars are given and no concrete proposal has been submitted by the respondent company how the respondent company proposes to make payment to the respective petitioning creditors. It is also not in dispute that the company was making loss and that at

least since last more than six months, the company is totally closed. Even some of the notices of the company petitions are returned unserved by the postal authority with an endorsement that company is closed. The learned advocate appearing on behalf of the respondent company has also not disputed that the company is closed. However, he has submitted that the workers are paid wages. Merely because, workers might be paid their wages, that does not mean that the company is a running concern. Considering the total dues of the respondent company, due and payable by the respondent company to the secured as well as unsecured creditors amounting to more than Rs.75 crores and that inability to pay any amount, shows that company has lost its financial substratum and the company is not in a position to revive. That after the admission of the present petitions/application and the advertisement of the admission, the respondent company has not done anything. It has not paid the dues of the petitioners/ applicant nor it has settled the matter. It has not come out with any affidavit that the company is a profit making company or is able to discharge its liability and debts and the company has not come out with concrete proposal/scheme. In view of the above and considering the fact that the dues are admitted and

company is not in a position to pay its debts and even considering the fact that cheques, which were deposited with the Registry of this Court pursuant to the order passed by this Court, are bounced, the company is required to be wound up.

11. For the reasons as stated above, all the petitions/ application are allowed. The respondent company is directed to be wound up. The Official Liquidator attached with this Court is appointed as Official Liquidator for the respondent company. The Official Liquidator is hereby directed to take possession of the properties (movable or immovable) of the respondent company along with its Bank Accounts, Cheque Books, Cash, Account Books etc., after preparing the inventories and panchnama. The Official Liquidator shall submit its report within a period of three months. If required, he can take service of the Official Valuer for the purpose of preparation, possession etc. No costs.

(M.R.SHAH,J.)

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